



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 15, 1998

Mr. John J. Carlton
Armbrust Brown & Davis, L.L.P.
100 Congress Avenue, Suite 1350
Austin, Texas 78701-4042

OR98-0134

Dear Mr. Carlton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 112074.

Circle C Municipal Utility District No. 4 (the "district"), which you represent, received a request from the City of Austin (the "city") for "information on the financial and program status of the District." The district has provided the city with all documents that it believes are not excepted from disclosure. You have, however, submitted to this office some documents that you contend are excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue.

Section 552.103(a) of the Government Code excepts from disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). A contested case under the Administrative Procedure Act ("APA") is litigation for purposes of section 552.103(a). Open Records Decision No. 588 (1991). Litigation cannot be regarded as "reasonably anticipated" unless there is more than a "mere chance" of it--unless, in other words, we have concrete evidence showing that the claim that litigation may ensue is more than mere conjecture. Open Records Decision Nos. 452 (1986), 331 (1982), 328 (1982). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision Nos. 452 (1986), 350 (1982).

You state that "the District reasonably anticipates that it will file a contested rate proceeding before the Texas Natural Resource Conservation Commission regarding the City's wholesale water and wastewater rates." You describe the circumstances that have led the district to believe that the city's rates are unfair to the district. We note that contested case hearings before the Texas Natural Resource Conservation Commission are generally conducted by the State Office of Administrative Hearings in accordance with the APA. *See* Gov't Code § 2003.047. For these reasons, we agree that the district reasonably anticipates litigation under section 552.103(a). Having reviewed the documents at issue, we find that they relate to the reasonably anticipated litigation. Thus, we conclude that the district may withhold the submitted documents from disclosure under section 552.103(a) of the Government Code.¹

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 112074

Enclosures: Submitted documents

cc: Mr. William Derryberry
Corporate Financial Analyst
Financial and Administrative Services
City of Austin
P.O. Box 2106
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(w/o enclosures)

¹We note that if the opposing parties in the anticipated litigation have seen or had access to any of the documents at issue, there would be no justification for withholding those documents from disclosure pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).